IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2904 OF 2021
IN
WRIT PETITION NO.381 OF 2021

Jaisingh Choraria and Ors. ...Applicants

Versus

Union of India and Ors. ...Respondents

...

Mr. Siddesh Bhole with Ms Srishti Joshi i/b. SSB Legal and Advisory for the Applicants.
Mr. A.R. Bamne i/b. M/s. A.R. Bamne and Co. for Respondent No.3.
Ms Sangeeta D. Shinde, APP for Respondent-State.
Mr. D.P. Singh for Respondent No.1.

CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.

DATE : 4th JANUARY, 2022.

P.C. :

1. The application is filed at the instance of the Applicants, who are the Petitioners in Writ Petition No.381 of 2021. The principle prayers in Writ Petition No.381 of 2021 were prayer clauses (a) and (b) read thus:-

> "a) That this Hon'ble Court be pleased to issue a writ of mandamus or such other writ/order or direction as may be deemed appropriate by this Hon'ble Court to direct the Respondent No.1 being the

office of Enforcement Directorate, (Zonal Office) at 10-A Jamnagar House, Akbar Road, New Delhi 110001 to forthwith inform Respondent Nos.2 to 4 to release /de-freeze the said accounts/ lockers/ mutual fund immediately.

b) In the alternative and without prejudice to prayer clause a) above, that this Hon'ble Court be pleased to issue a writ/direction or order or such other orders to Respondent No.2 to 4 to forthwith release/de-freeze the bank accounts/ lockers and mutual funds as more particularly described in Exhibit A."

2. Our attention was invited to order dated 07/10/2021 passed by the Division Bench of this Court whereby the petition was disposed of. The Division Bench made a reference to the prayers in the petition viz. prayer clauses (a) and (b) and further made a reference to the reply on behalf of Directorate of Enforcement. The report was filed through the Assistant Director of Directorate of Enforcement and it was stated in the reply that the contention of the report were untenable and that <u>said bank accounts are not frozen</u> and only directions were given that withdrawal /encashment from the said accounts be allowed with prior intimation to that office (emphasis supplied by us). Further it was observed by the Division Bench in paragraph 4 as under:-

> "4. The learned counsel for the Respondent No.1 reiterates the points stated in the affidavit that the accounts, mutual funds, lockers of the Petitioners were never frozen. It was only informed to the banks and financial institutions that withdrawal from the said accounts be allowed with prior intimation to the Enforcement Directorate."

In view of the above referred facts, the petition was disposed of.

3. Learned counsel for the Applicants submitted that there was a communication dated 06/09/2017 interse between the office of the Enforcement Directorate and Branch Manager of Respondent No.3-Bank of Baroda. Initially the Applicants were not aware of this communication and subsequently the communication came to their knowledge. Learned counsel for the Applicants then submitted that in view of the order of this Court the Applicants were under a bonafide belief that there would be no hurdle or hindrance for the Applicants to operate their Bank accounts, but then when the Applicants approached for operation of their accounts, Respondent No.3-Bank informed the Applicants that they are required to submit a pre-intimation for operation of their bank account. After receipt of such intimation, the Respondent No.3 -Bank in turn would forward the intimation to the Enforcement Directorate.

4. Submissions of the learned counsel for the Applicants are that though on one hand Respondent No.1-Enforcement Directorate made a statement in this Court on affidavit that the bank accounts of the Applicants /Petitioners are not frozen, on the other hand Respondent No.3-Bank on a plea of pre-intimation is creating hurdles in operation of their own bank accounts.

5. Learned counsel appearing for Respondent No.3-Bank invited our attention to a communication, copy of the same is placed on record at page -37. Our attention was invited to particular statements reflected in paragraph 4 of the communication and these statements read thus:-

> "4. Therefore, whenever your clients intends to withdraw any amount from the said account or to operate the locker, your clients will have to intimate to our bank well in advance about their such intention so that before allowing your clients to withdraw the amount or to operate the locker, our bank can send prior intimation to the office of ED about your client's such intention. We, therefore, hereby call upon your clients through you to intimate to our bank at least two weeks in advance about your client's request or intention to withdraw any amount from the said account or to operate the said locker so that our bank can send appropriate prior intimation to the office of ED. Kindly note that in view of the said letter dated 06.09.2017 sent by ED in order to enable bank to allow withdrawal of any amount from the said account to operate the Locker

your client is requested to send us the intimation in advance as stated hereinabove."

6. Learned counsel for Respondent No.3-Bank of Baroda submits that Bank is not preventing the Applicants to operate their bank accounts but expects only a pre-intimation so that the Respondent No.3 -Bank in turn can intimate the Enforcement Directorate.

7. Considering the order of the Division Bench while disposing of the writ petition and other relevant facts, we are of the opinion that Respondent No.3-Bank cannot put a rider to the Applicants for operation of their bank account and locker as the bank account is not frozen by the Enforcement Directorate. Now so far as part of intimation is concerned, it seems that the Enforcement Directorate expects a feedback from the Banks wherein the Bank accounts are operated on a pre-intimation. Thus, this seems to be only a procedural safeguard and such a safeguard shall not be a rider or hurdle or hindrance for the Applicant to operate their own account and locker.

8. Accordingly, we dispose of the application permitting the

Applicants to operate their account in view of the order of this Court dated 07/10/2021 and Respondent No.3-Bank may only observe the safeguard of receiving intimation from the Applicants and in turn forward the same to the Enforcement Directorate but such a safeguard shall not be a rider for the Applicants to operate their bank account and locker. In case Respondent No.3-Bank is having any reservations or doubts, it is at liberty to take appropriate steps seeking modification or clarification of the order of this Court by taking appropriate steps.

9. The application stands disposed of.

(ANIL S. KILOR, J.) **(PRASANNA B. VARALE, J.)**

MEGHA S PARAB Digitally signed by MEGHA S PARAB Date: 2022.01.06 14:52:47 +0530